

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAMIRO MADRIZ-HERNANDEZ,

Defendant.

Case Nos. 16-CV-03603-LHK
12-CR-00762-LHK-1

**ORDER DIRECTING GOVERNMENT
TO ANSWER § 2255 MOTION**

Re: Dkt. No. 1

Defendant Ramiro Madriz-Hernandez (“movant”), proceeding *pro se*, filed on June 27, 2016 a Motion to Vacate, Set Aside, or Correct the Sentence pursuant to 28 U.S.C. § 2255. ECF No. 1 (“§ 2255 Motion”). Movant’s § 2255 Motion argues his sentence has been rendered invalid by the Supreme Court’s holding in *Johnson v. United States*, 135 S. Ct. 2551 (2015). *Id.* at 3–5. Under 28 U.S.C. § 2255:

- (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

The Court can not say that the motion, files, and records of the case “conclusively show” that movant is not entitled to relief. 28 U.S.C. § 2255(b). Movant’s claim appears cognizable under § 2255 and thus merit a response from the United States. Accordingly, the Court ORDERS the United States to respond to movant’s claims per the schedule set forth below.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve a copy of this Order and the motion upon the United States and the United States’ attorney, the United States Attorney. The Clerk shall also serve a copy of this Order on the movant, and shall file a certificate of service after doing so.

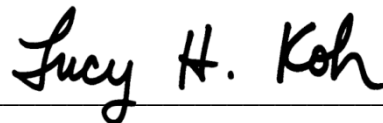
2. Within sixty (60) days of this Order, the United States shall file with the Court and serve on movant an Answer or other response in conformance with Rule 5 of the Rules Governing Section 2255 proceedings.

3. If movant wishes to respond to the Answer, movant may file a reply within thirty (30) days of receiving the United States’ Answer.

4. Unless otherwise ordered by the Court, the matter will be deemed submitted upon the filing of the reply or upon expiration of the time to file a reply.

IT IS SO ORDERED.

Dated: July 1, 2016



LUCY H. KOH
United States District Judge